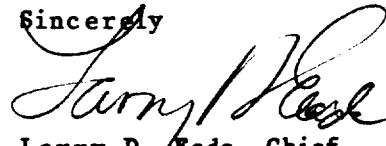


Bankruptcy Court for the Western District of Texas<sup>3</sup> or some other local court of competent jurisdiction, we do not believe that the public interest warrants deferral, denial or designation of those proposals. However, we should point out that a Commission action merely authorizes the parties to proceed with the transaction and does not prejudice any relief to which the parties may be ultimately entitled under civil suit.

Accordingly, IT IS ORDERED, That: (i) the application (BAPH-871214GI) for assignment of the permit and sale of the assets of Station KLSC(FM) from West Texas Broadcasting Co., Inc. to Giraffe Communications, Inc. IS GRANTED; (ii) the application for assignment of license and sale of the assets of Station KUFO(FM), La Mesa, Texas, from Giraffe Communications, Inc. debtor-in-possession, to Texas Broadcasting Co., Inc., IS GRANTED; and (iii) the December 15, 1987 informal objection, filed on behalf of Galen Gilbert, IS DENIED. Additionally, IT IS ORDERED that the request for grant of special temporary authority made by WTB and Giraffe, to operate with facilities specified in applications numbered BPH-871214IE and BPH-871214ID, respectively, pending final Commission approval, IS GRANTED for a period of 180 days from the date of this letter. The two applications will be processed in due course.<sup>4</sup> These actions are taken pursuant to 47 C.F.R. § 0.283.

Sincerely



Larry D. Eads, Chief  
Audio Services Division  
Mass Media Bureau

cc: Gaten Gilbert  
West Texas Broadcasting Co., Inc.  
Giraffe Communications, Inc.

---

3 Giraffe has certified its financial qualifications to own and operate KLSC(FM). See application file No. BAPH-871214GI, Section III, Page 8.

4 To the extent these applications may be considered "contingent" within the meaning of 47 C.F.R. § 73.3517, we hereby waive the provision on our own motion.

EXHIBIT C

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

1 DEC 1993

IN REPLY REFER TO:  
1800B3-MFW

James P. Riley, Esq.  
Fletcher, Heald & Hildreth  
11th Floor, 1300 North 17th Street  
Rosslyn, Virginia 22209

Lawrence J. Bernard, Esq.  
1300 19th Street, N.W.  
Suite 240  
Washington, D.C. 20036-1609

Southwestern Broadcasting Corporation  
P.O. Box 2401  
Lubbock, Texas 79408

In re: KMMX(FM), LaMesa, Texas  
West Texas Broadcasting Co,  
Inc.

KIOL-FM, LaMesa, Texas  
100.3 Radio, Inc.

KLZK(FM), Brownfield, Texas  
Southwestern Broadcasting  
Corporation

Gentlemen:

This letter refers to the current allotment problem involving the above-referenced stations.

Background. West Texas Broadcasting Co., Inc.'s ("West Texas") station, KMMX(FM) (formerly KLSC(FM)), was licensed to LaMesa on Channel 262C1 from a site north of the community. See BLH-870509KA, granted on March 18, 1988. 100.3 Radio, Inc.'s ("100.3 Radio") station, KIOL-FM (formerly KUFO(FM)), was licensed to LaMesa on Channel 284C1 from a site south of the city. See BLH-830516AE, granted February 16, 1984.<sup>1</sup> Station KLZK(FM) was formerly licensed to Brownfield on Channel 280A.

Due to a concentration of Class C stations, KMMX "discovered that the station's signal could not be received in substantial areas within the city of Lubbock, Texas,

---

<sup>1</sup> For the sake of clarity, only the stations' current call signs will be used.

even though its signal intensity was 3.16 mV/m or greater...."<sup>2</sup> In order to improve KMMX' coverage of Lubbock, Texas, KMMX and KIOL-FM agreed to trade frequencies and filed with the Commission on September 9, 1987 "Joint Request for Order Modifying Licenses to Specify New Operating Facilities." In that request, the parties stated that they would continue to operate with presently authorized facilities (antenna site, power, antenna height) but simply switch frequencies: KMMX would operate on Channel 284C1 from its site north of LaMesa rather than its licensed 262C1, and KIOL-FM would operate on Channel 262C1 from its site south of LaMesa rather than its licensed 284C1. Approval of such a plan would eliminate the need for rulemaking and avoid subjecting the proposals to the Commission's "cut-off" rules.

The Chief, Audio Services Division, denied the request as inappropriate and unjustified by letter dated November 20, 1987 (reference 8920-MW). However, it was suggested that the parties could structure a "sale and leaseback" transaction in which each party would: (i) assign the permit/license and sell some or all of the assets of the respective stations to each other; (ii) exchange call signs and lease back each other's technical facilities.

KMMX and KIOL-FM submitted such proposals on December 14, 1987. See application nos. BAPH-871214GI/BPH-871214IE and BALH-871214GH/BPH-871214ID, respectively. The Chief, Audio Services Division approved the assignment applications and granted special temporary authorization ("STA") to KMMX and KIOL-FM operate for 180 days with the facilities specified in the modification applications. Letter to Barry W. Sheridan, Esq. and Lawrence J. Bernard, Esq., reference 8920-MW, (Chief, Audio Services Division, March 25, 1988). A request for extension of these STA's, which was filed on September 14, 1988, is currently pending. As a result of these transactions, 100.3 Radio now owns the license and assets for the station north of LaMesa operating on Channel 262C1 formerly owned by West Texas and has an STA (with pending request for extension) and pending application to operate with its formerly licensed technical facilities south of LaMesa on the new channel. Similarly, KMMX owns the license and assets for the station south of LaMesa operating on Channel 284C1 formerly owned by 100.3 Radio and has an STA (with pending request for extension) and pending application to operate with its formerly licensed technical facilities north of LaMesa on the new channel.

On the same day that KMMX and KIOL-FM filed their assignment/modification proposals, the Commission adopted a Notice of Proposed Rule Making in MM Docket 87-603, 3 FCC Rcd 231 (Chief, Allocations Branch, 1988). In this document, which was issued pursuant to a request by then-licensee Brownfield Broadcasting Corporation, the Commission proposed to upgrade the allotment for station KLZK(FM) (then KKTC(FM))

---

<sup>2</sup> See the Engineering Statements of Charles F. Ellis and Robert M. Silliman, attached as Exhibits B and C to the original request for an order to modify licenses. The interference was allegedly caused in part by an intermodulation problem resulting from the combination of an AM signal on 950kHz with a spurious emission by an FM station on 101.1 MHz on the frequency of 100.15 MHz. This problem was subsequently resolved, but KMMX continued to experience severe reception problems in the Lubbock area. We note here, as we did in our November 20, 1987 letter, that KMMX is not licensed to Lubbock and has no obligation or right to provide service to that community.

from Channel 280A to Channel 282C2. In keeping with the Commission's policy, the KMMX proposal, although listed in the Commission's data base, was treated as a mere "site preference"<sup>3</sup> and the proposal to upgrade the KLZK allotment was adopted on September 28, 1988. Report and Order in MM Docket No. 87-603, 3 FCC Rcd 6158 (Deputy Chief, Policy and Rules Division, 1988). The station was given 90 days to file a minor change application to implement the upgrade. That application was filed on October 26, 1989, but was dismissed by letter of March 17, 1992 due to its creation of a short-spacing with station KKIK(FM), Lubbock, Texas. Letter to Southwestern Broadcasting Corp., reference 8920-JAG (Chief, FM Branch, March 17, 1992).

Additionally, we note that station KLZK is currently silent and has been off the air since October 30, 1988.<sup>4</sup> Southwestern acquired KLZK from Brownfield Broadcasting Corporation on July 1, 1990, pursuant to the approval of assignment application no. BALH-900223HF, granted on May 4, 1990. On December 2, 1992, an operational status inquiry letter was sent to Southwestern summarizing the station's recent history and presenting three options: (i) notify the office of the Chief, Audio Services Division, that the station has resumed Class A operations; (ii) notify the Chief that the station would immediately resume operations; or (iii) request special temporary authorization to remain silent under 47 C.F.R. § 73.1635. In a response dated January 6, 1993, Southwestern chose the third option, requesting special temporary authorization to remain silent for 6 months "or until such time as a construction permit for 282C2 is issued with 90 days to construct."

Discussion. The primary problem here is that KMMX's proposal to operate on Channel 284C1 from its current site north of LaMesa is short-spaced by 49.4 kilometers to the higher-priority reserved upgrade and frequency change allotment for KLZK in Brownfield.<sup>5</sup> While several parties have proposed solutions to this unfortunate circumstance,<sup>6</sup> the parties have not submitted a joint proposal. Furthermore,

---

<sup>3</sup> See generally the Notice of Proposed Rulemaking in MM Docket No. 91-348, 6 FCC Rcd 7346 (1991).

<sup>4</sup> KLZK was granted special temporary authorization to remain silent by letter dated January 4, 1989. Letter to Brownfield Broadcasting Corp., reference 8920-GDG (Chief, FM Branch, January 4, 1989). That STA expired on January 15, 1989, and an extension was not sought. However, Southwestern has requested a new STA as discussed infra.

<sup>5</sup> The spacing required by 47 C.F.R. § 73.207 is 79 kilometers, while the actual spacing proposed in KMMX' application is 29.6 kilometers. KMMX has been formally informed of this deficiency. Letter to West Texas Broadcasting Co., Inc., reference 8920-JAG (Chief, FM Branch, March 17, 1992). Even as a Class A facility, the Brownfield station would still be 45.4 kilometers short-spaced to KMMX's proposal.

<sup>6</sup> Thomas Crane of KLZK suggested a solution by letter dated January 10, 1990, which proposes that: (i) KIOL-FM would surrender its STA and modification application and return to its licensed operation on Channel 284C1; (ii) KMMX would likewise return to its licensed operation on Channel 262C1; and (iii) KLZK

engineering studies indicate that there are no other available frequencies to which either KMMX or KLZK could move which would resolve the spacing deficiency.

Because there appears to be no workable solution to this problem, we see no recourse at this time but to: (i) ultimately cancel the extant STA's for both KMMX and KIOL-FM; and (ii) dismiss the mutually contingent modification applications. KMMX's modification application cannot be granted, nor can it be used further to delay the implementation of upgraded service to Brownfield; because KMMX's modification cannot be approved, KIOL-FM's application (which specifies the technical facilities acquired by KMMX via the assignment application) cannot be approved. KMMX and KIOL-FM will then be required to operate with the facilities each acquired pursuant to BAPH-891214GI and BALH-891214GH, respectively.<sup>7</sup> Because extension of the March 25, 1988 STA's for KMMX and KIOL-FM was requested but has not yet been granted, the stations currently have authority to operate with the facilities specified in BPH-871214ID and BPH-871214IE. In order for the stations to organize their affairs and plan future action, we will extend the STA's for 90 days from the date of this letter, but hereby advise the stations that requests for further extension will not be granted.

The second problem involved here is KLZK's failure either to implement the upgrade or resume operation with its currently authorized Class A facilities. In its January 6, 1993 response/request for special temporary authorization to remain silent, KLZK details the perceived problems involving the station's future upgrade, but fails to describe why the station must remain silent while these problems are

---

would then switch frequencies with KMMX such that KLZK would operate on Channel 262C1 and KMMX on Channel 284C. Lawrence Bernard, Jr., counsel for KMMX, submitted an alternate proposal to KIOL-FM and KLZK on June 17, 1992, pursuant to which: (i) the parties would join in a petition for rulemaking to delete Channel 262C1 from LaMesa and allot it to Tahoka, Texas; (ii) when the rulemaking is granted, 100.3 Radio (licensee of KIOL-FM) would file a minor change construction permit application to implement the rulemaking; (iii) when the permit is issued, 100.3 would assign the KIOL-FM Channel 262C1 license back to West Texas, and West Texas would assign the KMMX Channel 284C1 license back to 100.3 Radio, provide it with a channel 284 antenna, and provide for other changes (as well as paying all costs involved) such that KIOL-FM could commence operations on Channel 284C1 on the effective date of the assignment. Mr. Bernard's solution presumes that KIOL-FM is currently licensed on Channel 262C1 and that KMMX is currently licensed on Channel 284C1.

<sup>7</sup> We realize that this will defeat KMMX's initial purpose in proposing the frequency switch in 1987, as it will cause KMMX to operate what were formerly KIOL-FM's facilities south of LaMesa and further from Lubbock than it originally operated. However, West Texas and 100.3 may reconvey their respective stations and retrieve the status quo ante. We also note that KIOL-FM's operation from the site north of LaMesa will put its main studio far outside its principal community (3.16 mV/m) contour, in violation of 47 C.F.R. §73.1125. It will therefore be required to request special temporary authorization to maintain its studio at the current location while it arranges to relocate the studio or seek a waiver of the studio location rule.

confronted. KLZK has not, for example, shown why it could not resume operations as a Class A station on Channel 282. We believe that KLZK's response is insufficient to warrant favorable action on its STA request, as it does not fully describe the necessity for remaining silent.<sup>8</sup> We further note that KLZK's license renewal application (File No. BRH-900315UC) remains pending because of the station's silence and because the radiofrequency ("RF") radiation information required in the application remains incomplete. Accordingly, action on KLZK's request to remain silent and license renewal application will be held in abeyance pending its submission of additional information. Within 30 days of the date of this letter, KLZK shall provide a detailed explanation of the specific steps it has taken and plans to take to return the station to the air once KMMX has returned to its former facilities. Included in the explanation should be a detailed timetable and the target date for the resumption of broadcasting, along with any additional items (such as correspondence, receipts, etc.) which would illustrate the extent of its efforts to return to the air. Failure on the part of KLZK to demonstrate that its operations would be in compliance with the Commission's RF radiation standards in 47 C.F.R. §1.1307(b), to commence operation on Channel 282,<sup>9</sup> and to file an acceptable application to implement its Channel 282C2 upgrade during this 60-day period will result in dismissal of KLZK's renewal application for failure to prosecute or other action looking toward deletion of KLZK's call letters and licensing of a new party to serve Brownfield.

Accordingly, IT IS ORDERED, That modification application nos. BPH-871214ID and BPH-871214IE ARE DISMISSED, and Station KLZK's January 6, 1993 request for extension of authority to remain silent IS HELD IN ABEYANCE. IT IS FURTHER ORDERED, That the request for extension of special temporary authorization filed on behalf of KMMX and KIOL-FM on September 14, 1988 IS GRANTED, and the authority granted on March 25, 1988 IS EXTENDED for 90 days from the date of this letter. IT IS FURTHER

---

<sup>8</sup> Pursuant to 47 U.S.C. § 309(f), the Commission is authorized to grant an STA in cases of "extraordinary circumstances requiring temporary authorizations in the public interest and when delay in the institution of the temporary operations would seriously prejudice the public interest." Temporary authority can be granted only if a statement accompanying the request is provided which explains in detail the circumstances which justify the request. When proper circumstances have been shown, the Commission is authorized to grant special temporary authorization for up to one hundred and eighty days under 47 C.F.R. § 73.1635(a)(4).

<sup>9</sup> Due to yet another complication, KLZK may not resume operation on Channel 280A. During the pendency of this proceeding, and in reliance upon the upgrade of the Brownfield allotment to Channel 282C2, the Commission upgraded the allotment of station KKYN-FM, Plainview, Texas from Channel 280A to Channel 280C1. Report and Order in MM Docket No. 88-571, 4 FCC Rcd 8788 (Chief, Allocations Branch, 1989). KKYN-FM has applied for and been granted a construction permit (BPH-901131IA) to implement that upgrade. KKYN-FM's commencement of program testing with its increased facilities will preclude KLZK from operating on Channel 280A. The LaMesa/Brownfield matter will not delay KKYN-FM's commencement of improved service.

ORDERED, That within 90 days of the date of this letter, KMMX and KIOL-FM shall either: (i) commence operation with the facilities approved in assignment applications BAPH-871214GI and BALH-871214GH; or (ii) file assignment applications to return to the status quo ante, in which case they each must file a request for special temporary authorization to cover operation during the transition period. The request filed by KIOL-FM should also request special temporary authorization to operate with its main studio at its current location pending relocation of the studio to a site which complies with 47 C.F.R. § 73.1125 or the filing and consideration of a request for waiver of that rule.

Sincerely,

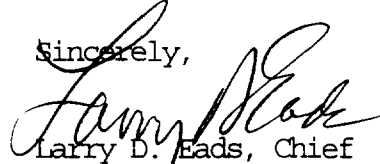
  
Larry D. Eads, Chief  
Audio Services Division  
Mass Media Bureau



EXHIBIT D

**WEST TEXAS BROADCASTING COMPANY, INCORPORATED**

**TAHOKA, TEXAS**

**ENGINEERING EXHIBIT**

**JANUARY 1994**

**WILLIAM CULPEPPER & ASSOCIATES, INC.  
900 JEFFERSON DRIVE  
CHARLOTTE, NORTH CAROLINA 28270**

WEST TEXAS BROADCASTING COMPANY, INCORPORATED

KMMX

TAHOKA, TEXAS

TABLE OF CONTENTS

	<u>PAGE</u>
DECLARATION	1
NARRATIVE	2
CHANNEL STUDY	3

WEST TEXAS BROADCASTING COMPANY, INCORPORATED

TAHOKA, TEXAS

DECLARATION

I declare, under penalty of perjury, that I have prepared the attached Engineering Exhibit for West Texas Broadcasting Company, Incorporated, licensee of KMMX, and that all of the facts therein, except for facts of which the Federal Communications Commission may take official notice, are true to the best of my knowledge and belief; and that I am a Registered Professional Engineer in the State of North Carolina.

Executed on January 12, 1994.

A handwritten signature in cursive script, reading "William A. Culpepper", is written over a horizontal line.

William A. Culpepper

William Culpepper & Associates, Inc.  
900 Jefferson Drive  
Charlotte, NC 28270  
704-365-9995

WEST TEXAS BROADCASTING COMPANY, INCORPORATED

TAHOKA, TEXAS

NARRATIVE

This exhibit supports the attached petition for rule making by West Texas Broadcasting Company, Incorporated, licensee of Radio Station KMMX. KMMX operates on channel 284C1 and is assigned to Lamesa, Texas. The purpose of this petition is to reassign KMMX to channel 262C1 at Tahoka, Texas. KIOI, Lamesa, is now on channel 262C1, and it will be reassigned to channel 284C1.

Page 3 of this exhibit is a channel study which shows that if KIOI is reassigned to channel 284C1, KMMX will meet all of the spacing requirements of §73.213 at 33° 23' 00" north and 101° 43' 00" west. The distance from this reference point to the Tahoka National Atlas coordinates is 25.16 kilometers, and a class C1 facility can easily satisfy the principal city signal strength requirements of §73.315 from this point. It is obvious from the channel study that there is a large usable area in which the spacing requirements for this facility can be met, providing reasonable assurance that a suitable transmitter site will be available.

WILLIAM CULPEPPER & ASSOCIATES  
900 JEFFERSON DR - CHARLOTTE NC 28270

WEST TEXAS BROADCASTING COMPANY, INC.  
TAHOKA, TEXAS

REFERENCE		CLASS C1	DISPLAY DATES
33 23 00 N			DATA 11-24-93
101 43 00 W		Current rules spacings	SEARCH 01-12-94
----- CHANNEL 262 -100.3 MHz -----			

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
KMMX	262C1	Lamesa	TX	213.9	32.85	245.0	-212.15 *
KIOLFM	262C1	Lamesa	TX	191.6	111.73	245.0	-133.27 *
ALOPEN	263C3	Dimmitt	TX	337.9	144.06	144.0	0.06 <
KOMX	262C2	Pampa	TX	16.1	253.32	224.0	29.32